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IN THE

Supreme Court of the United States

NO. [redacted]103

OCTOBER TERM, 1968

EDMUND WINKLER, Petitioner

v.

THE PENNSYLVANIA RAILROAD COMPANY, a Corporation, and SAMUEL W. PRINGLE, Respondents

PETITION FOR WRIT OF CERTIORARI OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

EDMUND WINKLER
2321 Sherbrook Street
Pittsburgh, Pa. 15217
In His Own Behalf

SMITH BROS. CO. INC., LAW PRINTERS, 620 SECOND AVENUE, PITTSBURGH, PA. 15219

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IN THE

Supreme Court of the United States

NO. .....

OCTOBER TERM, 1967

EDMUND WINKLER, Petitioner

v.

THE PENNSYLVANIA RAILROAD COMPANY, a Corporation, and SAMUEL W. PRINGLE, Respondents

PETITION FOR WRIT OF CERTIORARI OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States.

Petitioner, Edmund Winkler respectfully prays that a Writ of Certiorari issue out of this Court to review the judgment of the United States Court of Appeals for the Third Circuit in favor of the Petitioner.

OPINIONS OF THE COURTS BELOW

The Opinion of the United States Court of Appeals for the Third Circuit is set forth as Appendix I beginning on page 20. The same Opinion is reported at 387 F.2d 380.

The Opinion of the United States District Court for Western Pennsylvania is set forth as Appendix I, beginning with page 15.

JURISDICTION

The date of the Judgment of the United States Court of Appeals for the Third Circuit to be reviewed and the time of its entry was December 20, 1967.

An Order Extending Time to File Petition for Writ of Certiorari was issued by the Supreme Court of The United States dated March 19, 1968, with the extension to and including May 18, 1968. (Appendix I.) page 25.

Jurisdiction to review this case upon Writ of Certiorari is conferred upon this Court in 28 U.S.C. Section 1254 (1).

QUESTIONS PRESENTED FOR REVIEW

1. The Circuit Court of Appeals erred in denying the jurisdiction of the Federal Court in this case by affirming such ruling of the U.S. District Court being in conflict with applicable decision of the Supreme Court of the United States and the United States Code.

2. The United States Court of Appeals stated that it is the concern of the Courts to upheld the right to citizenship but erred in the following conclusion, that failure to do so does not infringe the rights derived and guaranteed by the Constitution.

QUESTIONS ARISING OUT OF THIS CASE.

1. The U. S. Constitution bestowes the U. S. citizenship to the foreign-born immigrant-resident. Is this citizenship of the naturalized citizen, granted and executed by the Federal Courts, equally to the citizenship of a U. S. born citizen in a court proceeding in the United States?

2. Is the citizenship of a naturalized citizen of the United States at all times upheld by the U. S. Constitution and protected by the U. S. Courts in their proceedings as agencies of the U. S. Government and States?

CASE HISTORY.

Appeal No. 16,757 to the U. S. Court of Appeals for the Third Circuit.

In the negligence jury trial before the Common Pleas Court at Pittsburgh, Pa. March 6, 1961 (action No. 1227 Jan. Term. 1958 — auto-accident) petitioner appeared as plaintiff and was attacked by the counsel for the defense, Mr. Samuel W. Pringle for the Pennsylvania Railroad Company, as FOREIGNER, despite, as his counsel in a later court hearing stated, that he knew of petitioner being a U. S. naturalized citizen (Annex II/B page 27). The remarks were uttered in the summary to the jury, not objected to by the presiding judge. Otherwise petitioner's counsel at this proceeding, by the opposing counsel's objection and upheld by the presiding judge's ruling, was not permitted to refer to the same issue in his, the following summary to the jury, leaving petitioner in the informations or instructions as received by the jury as the "FOREIGNER, who came here to pick up money".
(Affidavit by petitioner's counsel, Annex II/A page 26)

The complaint for defamation of character and violation of constitutional rights in a court proceeding was presented to the Common Pleas Court in Pittsburgh, Pa., later the U. S. District Court, appealed to the U. S. Court of Appeals for the Third Circ. and the U. S. Supreme Court, in consecutive order recorded under No. 110 Pgh. L. J. 323 (C. P. Ally. 1962), 214 F. Supp. 125 (W. D. Pa. 1963), 324 F.2d. 613 (3d. Circ. 1963) and 377 U. S. 908, 84 S. Ct. 1169, 12 L. Ed. 178 (1964). The appeal to the Supreme Court of Pennsylvania at No. 16 March Term 1963 was left unrecorded (as stated by the defense).

Case History.

With reference to the U. S. Supreme Court rulings of the last years in the observance of constitutional rights in legal proceedings petitioner motioned the re-opening of the case before the U. S. District Court at Pittsburgh, Pa. in action C.A. 62-808 but motion denied with order May 24, 1967. (Annex I/A page 15). The appeal from this order to the U. S. Court of Appeals for the Third Circ. was presented under No. 16,757, but denied with decision December 20, 1967 (Annex I/D page 20).

Petitioner is not represented by counsel and despite the most intensive efforts was unable to contract such representation. The Justice Department, called upon for representation on ground of the 1964 Civil Rights Act Part 9 declined as well despite so often exercised activity in other individual civil rights cases.

This in view of assurances by so many lawyers that the presented complaint's legal cause is just and in the realm of the U. S. Constitution. In these opinion's conclusion there is no doubt, that the opposing counsel's utterances to the jury were in violation of petitioner's constitutional rights in a court proceeding, more significant because not pertinent to the tried negligence case. The question, raised by one of the judges and some of the lawyers, was left unanswered: Does the fight for the freedom and right of the individual, undertaken by the single individual, has any chance or hope of success?

The HOPE TO PREVENT THAT THE MILLIONS OF NATURALIZED CITIZENS in the result of the past judgments LOOSE THEIR IDENTITY IN THE COURTS.

ARGUMENTS.

In view of this condition not having proper representation nor proper presentation of the case's merits and arguments, petitioner repeatedly employed the evaluation of the U. S. Supreme Court's "Gideon" decision with all the manifold of legal terms of constitutional provisions and arguments forwarded in its behalf. To note only some of them:

> Did petitioner had in the past years and before the courts the mental capability to present his case in proper form?
>
> Did the petitioner had the required legal experience and knowledge along with the skill as a lawyer would have argued the case in the courts?
>
> Did petitioner meet in the courts an adversary prejudicial atmosphere against the petitioner?

In the last years the U. S. Supreme Court issued two significant decisions in the full recognition of the U. S. citizenship granted to U. S. naturalized citizen as equal to the one of U. S. born citizens.

> Therefore is the appearance of a naturalized citizen in a court in the United States an exception of this general ruling?

The 14th amendment Section I reads:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens . . . . . nor deny to any person within its jurisdiction the equal protection of the laws."

Arguments.

The noted U. S. Supreme Court decisions, in the extension of the 14th amendment's provision, entitle therefore the U. S. naturalized citizen to full and equal citizenship in a court proceeding.

And gives the citizen the EQUAL PROTECTION OF THE LAWS. In the conclusion thereof: in a court proceeding the courts are the only one present authority to extend and exercise the required Protection of the Laws to the rights of the individual appearing in the courts. An opinion repeatedly expressed and stipulated in the decisions of the U. S. Supreme Court.

THE ACTION IN THE U. S. COURT OF APPEALS.

1. The Circuit Court of Appeals erred in denying the jurisdiction of the Federal Court in this case by affirming such ruling of the U.S. District Court being in conflict with applicable decision of the Supreme Court of the United States and the United States Code.

The jurisdiction of the Federal Courts, as cited as precondition in the 14th amendment, in this case presented by petitioner, is explicitly shown and manifested in Civil Rights Cases 109 U. S. 3, 3 S Ct. 18 Oct. Term, 1883 (Annex page ....) and 42 U. S. Code Par. 1983 and 1985 (Annex page ....).

2. The United States Court of Appeals stated that it is the concern of the Courts to upheld the right to citizenship but erred in the following conclusion, that failure to do so does not infringe the rights derived and guaranteed by the Constitution.

In the original Common Pleas Court proceeding the court did not observe the outlined general rule of PROTECTION OF THE LAWS and in the thereof following complaint by the petitioner the U. S. Federal Courts refused the recognition of this requirement when called upon.

In its decision Dec. 20, 1967 the U. S. Court of Appeals stated: (quote) ". . . . that all citizens whether naturalized or not, be accorded the rights of citizenship equally. (But) As the Supreme Court of the United States has frequently pointed out, failure to apply 'a constitutional guarantee' on the facts of any particular case does not disparage (such guarantee) . . . . in any

manner. See *Johnson v. New Jersey,* 384 U. S. 719, 728 (1966) and cases there cited." (unquote)

With this decision the Court found itself not bound by the provisions of the 14th amendment and in effect, if upheld by the U. S. Supreme Court, in the application of the american system of judgment by precedent cases RENDERED THEM INVALID.

The U. S. Court of Appeals in its decision attempts to suggest that one violation or the other does not change the law or Constitution. If to accept this principle of court decisions any constitutional provision or law can be violated by someone and excused by any court in the United States to its preference. And neither the Constitution nor any law will have its full face-value, manifold interpretated or, as in this case, OUTRIGHT DENIED AS AN EXCEPTION.

Following is the statement (few weeks ago) of a highly authoritative personality of U. S. Law and its interpretation (quote)

> ". . . . to often, he said, judges forget that they have taken an oath to support the Constitution as it is, not as they think it should be . . . .
>
> . . . . he is committed, as always, to interpretation of the Constitution based on what is written in it and on what the framers intended. But a judge who one day reaches a welcome view for the wrong reasons may on another held an unwelcome position. "I strongly believe that the public welfare demands that constitutional cases must be decided according to the terms of our Constitution itself and not according to judges' views of fairness, rea-

sonableness or justice. I have no fear of constitutional amendments properly adopted, but I do fear the rewriting of the Constitution by judges under the guise of interpretation."

In support of his arguments before the U. S. Court of Appeals petitioner made reference to: *Burton v. Wilmington Pkg. Auth.* 365 U. S. 715, Civil Rights Case 109 U. S. 3, 3 S Ct. 18, *United States v. Price* 383 U. S. 787 insofar references to Civil Rights Cases 109 U. S. 3, 3 S Ct. 18 were employed, U. S. Code Title 18 Section 241 and 242, Title 28 Section 1343, and Title 42 Section 1983 and 1985.

The employment of *Johnson v. New Jersey* (a criminal case) 384 U. S. 719, (1966) in the U. S. Court of Appeals' judgment following the opposing party's reference thereof, is hardly justified and comparable with the present case. In *Johnson v. New Jersey* the violation of constitutional rights may have unintentionally occured in the prosecution of the executed criminal action, which was followed by proper court proceeding and concluded (in view of the evidence) with the conviction of the guilty party, but brought forward years after that to overrule the basic principle of crime and punishment. In the present case the violation of constitutional rights in an action with predetermination, is a part or rather the integral and dominating part (so far as its influence is reflected) of the committed illegal action.

Appeal No. 16,758 and 16,759 to the U. S. Court of Appeals for the Third Circuit.

With brief March 15, 1967 to the U. S. District Court the defense presented motion that the court enter a permanent injunction against petitioner, enjoining him from proceeding in this court or in any other court with any further proceedings of any nature which in any way relate to the subject matter of the above captioned civil action....

The U. S. District Court with order June 2nd. 1967 denied this motion (Annex I/B page 18).

June 19, 1967 petitioner entered brief and presented complaint to the U. S. District Court, charging the defense with violation of constitutional rights, as this was stated in the Court's order June 2nd. 1967.

With its order June 21st. 1967 the U. S. District Court, contrary to its previous opinion, dismissed the charge.

The defense appealed the court's order June 2nd. 1967 to the U. S. Court of Appeals under No. 16,758.

Petitioner appealed the court's order June 21st. 1967 to the U. S. Court of Appeals under No. 16,759.

Both appeals reflect the differing opinions of the opposing parties in reference to the defense's motion for permanent injunction. Nevertheless following the defense's request and despite petitioner's objection the U. S. Court of Appeals consolidated appeal No. 16,757 with appeal No. 16,759, the merits of these appeals being completely different, but leaving appeal No.

16,758, brought forth by the defense, for separate consideration and judgment.

The court's opinion, the appeal No. 16,758 to be returned to the U. S. District Court for open court hearing, as requested by the defense, therefore is as well true, evidenced and manifests for petitioner's appeal No. 16,759 to the same case's merits.

With order January 18, 1968 the U. S. District Court asked the defense to present brief in support of its motion, as requested in appeal No. 16,758 for rehearing with the provision, petitioner to be given the opportunity to reply.

With brief January 22, 1968 to the U. S. District Court the defense declined to do so until the mandate is returned, leaving the case's merits open for argument and not decided by any court opinion.

The U. S. Court of Appeals in its judgment Dec. 20, 1967 denied all the elements of petitioner's appeal No. 16,759. If this decision would have been upheld by the U. S. Supreme Court and the mandate returned to the U. S. District Court, the defense would appear in a civil action as the only party present, a certainly rare legal occurance.

Beyond the presented timetable petitioner refrains from the presentation of any litigation of appeals NoNo. 16,758 and 16,759. To petitioner should have been granted the right of reply and closing arguments in view of the complaint brought forth June 19, 1967 (as described in the Rules of Court Procedure) in addition and support of the allegation in the complaint's presentation.

Samuel W. Pringle as defendant in Civil action No. 62-808 of the U. S. District Court for the Western District of Pennsylvania.

In the cited action before the U. S. District Court, Samuel W. Pringle was co-defendant with the Pennsylvania Railroad Co. in appeals No. 16,757 and 16,759. In both these appeals Mr. S. W. Pringle did not present any arguments or defense in general to the U. S. Court of Appeals. Furthermore with action July 12, 1967 before the U. S. District Court he withdrew from the defendants' appeal No. 16,758.

In view of Mr. S. W. Pringle not presenting to the U. S. Court of Appeals any defense, petitioner asked for issue of judgment, which was denied by the court.

It is customary and accepted practice that in cases of "no defense" the plaintiff's charges are assumed to be correct and judgment issued in his behalf. Only when any legal reason exists which would justify the defendant's action to be exonerated by the court without infringement of any law or legal provision, than deferment of judgment would appear reasonable.

In this case no reason appears justifiable nor did the Court of Appeals in its decision cite any reason for the deferment of judgment.

It is to the discretion of the Court to act upon.

Closing Presentation.

Petitioner is aware of the circumstances, that in the event the U.S. Supreme Court would be inclined to grant writ of certiorari and the case's presentation in Court, petitioner without the representation by counsel would not be in the position to do so.

Petitioner takes the opportunity to refer to: *Hamilton v. Alabama* 376 U. S. 650, 84 S. Ct. 982 in which case the U. S. Supreme Court issued its decision unanimously without hearing in favor of petitioner. The decision's merits are actually the same as in this case, the disapproval of any type of discrimination in court.

With the cited reference to: *In Re Murchison* 349 U. S. 133:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of Law has always endeavored to prevent even the probability of unfairness."

Petitioner, respectfully submitting the foregoing presentation, remains confident in the belief, that justice will prevail in the decision of the High Court.

Respectfully,

EDMUND WINKLER

APPENDIX I.

ANNEX A.

(Filed May 24, 1967)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EDMUND WINKLER, Plaintiff, v SAMUEL W. PRINGLE and THE PENNSYLVANIA RAILROAD COMPANY, a Corporation, Defendants	Civil Action No. 62-808

Opinion

ROSENBERG, *District Judge*

This matter is before me on a "Petition For Renewal and Reopening of Proceeding" submitted by Edmund Winkler, plaintiff.

On the 10th day of January 1963, I dismissed a complaint filed by the plaintiff in an action for alleged violation of constitutional rights under the Civil Rights Act, 42 U.S.C.A. §1981 et seq. In his complaint, the petitioner, an unsuccessful litigant in the State courts, contended that all persons involved in the State court proceedings had conspired to deny him justice.

In dismissing the complaint, I held that the plaintiff's action was clearly that of a private individual as-

serting an invasion of his civil rights by private individuals, for which remedy must be had in State courts unless diversity of citizenship existed between the parties and that the "Plaintiff does not argue or contend that any of the named parties in the above suit are anything but residents and domiciliaries of Pennsylvania." Further, in support of a bare assertion in the complaint that the State court officials, including two of the three judges who comprised the court which dismissed the plaintiff's defamation cause, conspired to deny the plaintiff justice, the plaintiff did not "aver a single fact upon which he can achieve his aim."

This order was affirmed, per curiam, on November 6, 1963, by our Court of Appeals for the Third Circuit in these words: "Our review of the entire record on file in this court satisfies us that the action of the district court was proper" 324 F.2d 613, C.A. 3, 1963.

Now, more than three years later, the plaintiff presents his "Petition for Renewal and Reopening of Proceeding". In support thereof he states that "the attorney, S. W. Pringle, appearing as the officer of the court and acting in court in the defense of his client, may be recognized as a private person, but his action of civil rights violation was inadvertadly [sic] supported by the presiding judge, named in the complaint's original as co-defendant, of the state court, where this action took place and who with his decision collaborated in it and prevented the proper rebuttal by the opposing counsel".

This allegation is repetitious of the averments as contained in the dismissed action and presents nothing

more. Since the plaintiff adds nothing here which he did not already raise in the prior action, his "Petition for Renewal and Reopening of Proceeding" will be denied.

Order.

AND NOW, TO-WIT, this 27th day of May, 1967, for the reason set forth in the foregoing Opinion, the Petition For Renewal and Reopening of Proceeding" of Edmund Winkler is hereby denied.

s/ LOUIS ROSENBERG
United States District Judge

cc: Edmund Winkler
Samuel W. Pringle, Esq.

ANNEX B.

Order.

(Filed June 2, 1967)

AND NOW, TO-WIT, this 2nd day of June 1967, after defendants, Samuel W. Pringle and the Pennsylvania Railroad Company, have presented a Motion for Permanent Injunction to enjoin the plaintiff, Edmund Winkler, from further proceedings of any nature in any court which in any way relate to the subject matter of this action; after it appears that the application is based upon a long period of personal harassment rather than of legal procedures; after it appears that a petition by the plaintiff for the reopening and reconsideration of his case has been dismissed by order of this Court on the 24th day of May 1967; and after it appears that no authority in law has been cited or exists for authorizing an injunction such as here requested and that this is not within the procedures as set forth under federal law or the Federal Rules of Civil Procedure.

IT IS ORDERED that the motion for permanent injunction be and the same is hereby denied.

LOUIS ROSENBERG,
United States District Judge.

cc: Edmund Winkler,
2321 Sherbrook Street,
Pittsburgh, Penna. 15217.

Norman J. Cowie, Esq.,
1524 Frick Bldg.

ANNEX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EDMUND WINKLER, Plaintiff, v. SAMUEL W. PRINGLE and THE PENNSYLVANIA RAILROAD COMPANY, a corporation, Defendants	Civil Action No. 62-808

Order.

AND NOW, TO WIT, this 21st day of June 1967, after it appears that three documents were filed by the plaintiff entitled "Brief To Motion For Renewal", "Motion For Issue of Subpoena" and "Complaint", and after it appears that this is in effect a petition for reconsideration of the order made the 24th day of May 1967, and for opening the judgment as the same was denied in said order, and after it appears that nothing new is presented for consideration, and after it also appears that there is no merit or basis for disqualification of this Member of the Court as based upon alleged prejudice, in the absence of any affidavit,

IT IS HEREBY ORDERED that the plaintiff's requests and motions as they may be contained in these documents be and they are all denied.

s/ LOUIS ROSENBERG
United States District Judge

cc: Edmund Winkler,
2321 Sherbrook Street,
Norman J. Cowie, Esq.,
1524 Frick Bldg.

Appendix I—Annex D.

ANNEX D.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 16757 & 16759

EDMUND WINKLER,
Appellant

v.

SAMUEL W. PRINGLE and
THE PENNSYLVANIA RAILROAD COMPANY,
Appellees

No. 16758

EDMUND WINKLER,
Appellee

v.

SAMUEL W. PRINGLE and
THE PENNSYLVANIA RAILROAD COMPANY

THE PENNSYLVANIA RAILROAD COMPANY,
Appellant

ON APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Argued November 24, 1967
Before
HASTIE, FREEDMAN and VAN DUSEN, *Circuit Judges*

Appendix I—Annex D.

Opinion of the Court

(Filed December 20, 1967)

By VAN DUSEN, *Circuit Judge*

These three appeals resulted from the filing on March 6, 1967, by appellant in Nos. 16757 and 16759 (hereinafter called petitioner) of a Petition for Renewal and Reopening of Proceedings instituted in the District Court in 1962 (a civil rights action filed as C. A. 62-808, W. D. Pa.), which had been finally determined by dismissal in 1964. See *Winkler v. Pringle* 214 F. Supp. 125 (W. D. Pa. 1963), aff'd. F. 2d 613 (3rd Cir 1963); cert. den. 377 U. S. 908 (1964). A brief in support of the petition was filed May 9, and on May 24, 1967, the District Court signed its order (supported by an opinion), denying this petition, from which the appeal in No. 16757 was filed.[1]

The above petition complains that the opinions dismissing the civil rights action in 1963 and 1964 did not pass on the merits of petitioner's complaint that the defendant-attorney attacked his as "a foreigner" (even though such attorney allegedly knew that he was a naturalized citizen), in a closing argument to the jury in a March 6, 1961, state court personal injury trial instituted by petitioner. It is too late to attack the rul-

---

1. Since petitioner had filed a brief and cited authorities in his petition, he cannot complain of the court's proper action in dismissing this petition on the record as it existed on May 24, 1967. This comment also applies to the order of June 21, 1967, mentioned below, since the document filed June 19 included a brief. However, it is preferable to give notice and grant an opportunity for oral argument if such is requested and neither party is confined in prison, even though the allegations of the petition are deemed to be admitted.

ings cited in the preceding paragraph which dismissed this civil action for lack of subject matter jurisdiction. See *Silverman v. Constitution Life Insurance Company,* 314 F. 2d 944 (3rd Cir 1963); 345 F. 2d 177 (3rd Cir. 1965).[2] Cf. *Stovall v. Denno,* 388 U. S. 293 (1967). Furthermore, such rulings are supported by this record.[3] It is unnecessary to elaborate on the concern and

---

2. In this case, the court said:

"While we recognize his sincerity and determination, we think he has had full opportunity to present his various contentions. There must be an end to litigation even though a litigant continues to be dissatisfied with the outcome"

3. None of the cases relied on by petitioner in either the District Court or in this court supports his contention that the Civil Rights Act give the Federal Courts jurisdiction over this case, complaining of action by an attorney acting for a private corporation in defending a personal injury action in a State Court. See *Williams v. Yellow Cab Co.,* 200 F. 2d 302, 307 (3rd Cir. 1952). Although the complaint makes no such allegation, plaintiff's contention in his argument of 11/7/62 (pp. 27-29 of transcript—Document 10 in C. A. 62-808) that the state judges conspired or cooperated with the defense counsel who used the word "foreigner" is not supported by anything on the record. In fact, at page 32 of the transcript, petitioner said:

"I wrote it in writing 'conspired' because I found this in my imagination, this was the point to prove a legal point. I don't like to call it this way . . . . I simply state what I didn't like."

As to the well recognized immunity of judges and judicial employees acting in their judicial capacity, see *Henig v. Odorioso et al.,* — F. 2d — (3rd Cir. No 16279, page 5 of slip opinion of 11/15/67), and cases there cited. Also, it is noted that more than "conclusory" allegations are required in a complaint under the Civil Rights Act. See *Negrich v. Hohn,* 379 F. 2d 213, 215 (3rd Cir. 1967).

interest which all Federal Courts have that all citizens, whether naturalized or not, be accorded the rights of citizenship equally. As the Supreme Court of the United States has frequently pointed out, failure to apply "a constitutional guarantee" on the facts of any particular case does "not disparage [such guarantee] . . . in any manner." See *Johnson v. New Jersey,* 384 U. S. 719, 728 (1966), and cases there cited.

On June 19, 1967, petitioner filed in the District Court a document entitled Brief To Motion For Renewal (Document 23 in C. A. 62-808, W. D. Pa.), to which is attached a Motion For Issue of Subpoena and a Complaint. This 13-page document citing authorities was treated as a Petition for Reconsideration of the above-mentioned order dated May 24, 1967, and, together with all requests and motions contained in it, was denied by order of June 21, 1967, from which order the Notice of Appeal docketed in this court as No. 16759 was filed July 19, 1967. For the reasons stated above, the June 21 order, denying the application to reconsider the order dated May 24, 1967, to set a hearing on the Petition filed March 6, 1967, and to issue a subpoena directing the State Court judge to appear and testify to the statements made by the individual defendant in the State Court proceeding of March 6, 1961, must be affirmed. Also, this order must be affirmed insofar as it denied the request in the above-mentioned complaint for "assignment of another judge . . . for further adjudication of the presented petition and complaint," since no valid reason for such a request was given in this document or appears in the entire record.[4]

---

4. Also, it is noted that no affidavit or compliance with the second paragraph of 28 U. S. C. § 144 appears in the record.

On March 15, 1967, defendants filed in the above District Court action a motion requesting that petitioner be permanently enjoined from further litigating any of the issues in such action. No answer to this motion was filed by petitioner and, without notice, oral or written argument, or hearing, the District Court filed an order (dated 6/2/67), on its own initiative, denying such motion for a permanent injunction, saying, inter alia, "no authority in law has been cited or exists for authorizing an injunction such as here requested and . . . this is not within the procedures as set forth under federal law or the Federal Rules of Civil Procedure, ..."[5] The corporate defendant has filed an appeal from such order, which is docketed as No. 16758.[6] Since defendants were entitled to notice and, at least (the allegations of their motion not being denied), an opportunity to present written arguments by brief or memorandum, the order of June 2, 1967, must be set aside. See *Swindell-Dressler Corporation v. Dumbauld,* 308 F. 2d 267, 273-4 (3rd Cir. 1962); *Sims v. Greene,* 161 F. 2d 87, 89 (3rd Cir. 1947).

The orders of the District Court at Nos. 16757 and 16759 will be affirmed and the order at No. 16758 will be remanded for further proceedings in accordance with

---

5. Appellant cites to the contrary *Silverman v. Constitution Life Insurance Company,* 345 F. 2d 177 (3rd Cir. 196), where this court affirmed an order enjoining plaintiff "from further litigation of the matter in suit."

6. Although the individual defendant originally joined in this appeal, he withdrew his Notice of Appeal, with District Court approval, on July 12, 1967.

the foregoing opinion. Petitioner's MOTION FOR ISSUE OF JUDGMENT, filed in all three appeals, will be denied.

A True Copy:

Teste:

Clerk of the United States
Court of Appeals for the Third Circuit

ANNEX E.

SUPREME COURT OF THE UNITED STATES

No. ..... October Term, 1967.

EDMUND WINKLER,

Petitioner

v.

THE PENNSYLVANIA RAILROAD COMPANY

Respondents

Order Extending Time to File Petition for Writ of Certiorari

Upon consideration of the application of petitioner, It Is Ordered, that the time for filing petition for writ of certiorari in the above-titled cause be, and the same is hereby, extended to and including May 18, 1968.

/s/ WILLIAM J. BRENNAN, JR.,
Associate Justice of the Supreme Court of the United States.

Dated this 19th day of March 1968.

APPENDIX II.

ANNEX A.

BERGER & BERGER
ATTORNEYS AT LAW
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April 3, 1963

Mr Edmund W. Winkler
2321 Sherbrook Street
Pittsburgh 17, Penna.

Dear Mr. Winkler:

At your request, I hereby make the following statement concerning the case which we tried in your behalf against the Pennsylvania Railroad Company:

TO WHOM IT MAY CONCERN:

During the trial that was held in the court of Common Pleas of Allegheny County from March 2 to March 8, 1961, in the matter of *Edmund W. Winkler v. Pennsylvania Railroad Company, et al.*, Samuel W. Pringle, counsel for Defendant, Pennsylvania Railroad Company, first introduced into the testimony, through cross-examination of the Plaintiff, that the Plaintiff, during

World War II, was a prisoner in a Russian prison camp. Later, during his summation to the jury, defense counsel referred to Plaintiff as being a foreigner or in some other manner made reference to the fact that Plaintiff had come to the United States from a foreign land. In my closing to the jury in behalf of the Plaintiff, I attempted to refer to the Plaintiff's war-time experiences in order to rebut the statement made by defense counsel; however, Mr. Pringle objected and the Court thereupon prevented me from finishing my remarks in this regard.

Sincerely yours,

MORRIS M. BERGER

MMB:LW

ANNEX B.

In the hearing before the U.S. District Court in action No. 62-808-CA. counsel Mr. Martin for the defense:

> "What he complains of, he says that Mr. Pringle referred to him as a foreigner, in his closing speech to the jury. Now, of course, Mr. Pringle doesn't agree (SIC) with anything that he said, *I mean with Mr. Winkler's interpretation of what he said. Mr. Pringle certainly has known that Mr. Winkler is a naturalized citizen.*" Unquote. (Page 3 of the court's record.)

ANNEX A.

CIVIL RIGHTS CASES

109 US 3, 3 S Ct. 18 Oct. Term 1883, 3-62
(Annotated) 27 L.ed. 835

. . . .

> ***An inspection of the laws*** shows that it makes no reference whatever to any supposed or apprehended violation of the Fourteenth Amendment on the part of the States. It is not predicated on any such view. It proceeds ex directo to declare that *certain acts committed by individuals shall be deemed offences, and shall be prosecuted and punished by PROCEEDINGS IN THE COURTS OF THE UNITED STATES.*

. . . .

In this connection it is proper to state that civil rights, such as guaranteed by the Constitution against state aggression, cannot be impaired by the wrongful acts of individuals, unsupported by *state authority in the shape of* laws, customs or *judicial* or executive *proceedings.* The wrongful act of an individual, unsupported by any such authority, is simple a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true, whether they affect his person, his property or his reputation; *but if not sanctioned in some way by the State,* or not done under State 'authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress.

ANNEX B.

42 U..S.C. Par. 1983.

CIVIL ACTION FOR DEPRIVATION OF RIGHTS.

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects, or causes to be subjected any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at Law, Suit in Equity, or other proper proceeding for redress. R. S. Par. 1979.

42 US.C. Par. 1985.

CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

2. If two or more persons in any State or Territory conspire to deter by force, intimidation, or threat, any party or witness in any Court of the United States, . . . to injure such party or witness in his person or property on account of his having so attended . . . or to influence the verdict, presentment or indictment of any grand or petit jury in any such court . . . or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the Laws, or to injure him on his property for lawfully enforcing, or attempting to enforce, the rights of any person, or class of persons to the equal protection of the Laws.

SECTION I OF THE XIVth AMENMENT CITED ON PAGE 6